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PAUL REICHE III and ROBERT FREDERICK FORD

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

STARDOCK SYSTEMS, INC.,

Plaintiff,

v.

PAUL REICHE III and ROBERT
FREDERICK FORD,

Defendants.

Case No. 4:17-CV-07025-SBA

**[PROPOSED] ORDER RE REICHE AND
FORD'S EVIDENTIARY OBJECTIONS
TO THE DECLARATION OF BRAD
WARDELL IN SUPPORT OF
STARDOCK'S *EX PARTE* MOTION FOR
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE WHY
PRELIMINARY INJUNCTION SHOULD
NOT BE GRANTED**

Judge: Hon. Sandra B. Armstrong

Complaint Filed: Dec. 8, 2017
Trial Date: June 24, 2019

PAUL REICHE III and ROBERT
FREDERICK FORD,

Counter-Claimants,

v.

STARDOCK SYSTEMS, INC.,

Counter-Defendant.

	<u>Proffered Evidence</u>	<u>Objection</u>	<u>Ruling</u>
1. “Stardock purchased all rights to the Star Control intellectual property.”	Wardell Decl., ¶ 3, Pg. 2, Lines 8-10	<u>FRE 602</u> <u>FRE 1002</u> <u>Lack of Foundation</u> Wardell has failed to provide the foundation establishing the purported purchase of “all rights to the Stardock intellectual property.” Moreover, the documents memorializing the purported purchase are required to prove that such a purchase took place and are the “best evidence” of such a purchase.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
3. “Stardock has not incorporated any copyrightable artwork from Star Control I, Star Control II, or Star Control III into the <i>Origins</i> game itself.”	Wardell Decl., ¶ 7, Pg. 3, Lines 1-2	<u>FRE 602</u> <u>FRE 701</u> Wardell lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide testimony as to what constitutes “copyrightable artwork.” His opinion therefore constitutes improper lay witness testimony that encompasses technical and/or specialized exclusively within the scope of Rule 702.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
4. “We expect similar numbers for Origins. A DMCA takedown notice on Steam would reduce sales and revenue by approximately 88% turning what would have been a successful game into a failure.”	Wardell Decl., ¶ 15, Pg. 3, Lines 24-26	<u>FRE 602</u> <u>Lack of Foundation</u> <u>Speculation</u> Wardell has failed to provide the foundation necessary to support his statement that Stardock expects similar numbers for Origins or that a DMCA notice would reduce sales and revenue by approximately 88%.	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

1		Wardell lacks personal knowledge and is speculating as to whether (1) Origins would be a successful game, and (2) a DMCA notice would turn Origins into a failure.	
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5	Wardell Decl., ¶ 16, Pg. 4, Lines 5-6	<u>FRE 602</u> <u>Lack of Foundation</u> <u>Speculation</u>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
6	“and its reputation will be harmed in the marketplace.”	Wardell lacks personal knowledge and is speculating as to whether Stardock’s reputation will be harmed.	
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10	Wardell Decl., ¶ 24, Pg. 5, Lines 1-2	<u>FRE 602</u> <u>Lack of Foundation</u> <u>Speculation</u>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
11	“Any DMCA takedown notice will also irreparably impact Stardock’s ability to partner with a game console publisher.”	Wardell lacks personal knowledge and is speculating as to whether a DMCA notice will impact its ability to partner with a console publisher.	
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16	Wardell Decl., ¶ 24, Pg. 5, Lines 3	<u>FRE 602</u> <u>Lack of Foundation</u> <u>Speculation</u>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
17	“A DMCA takedown of the game will prevent any console publisher from publishing the game. Without a game console publisher, <i>Origins</i> will only be available on PC which will reduce its potential audience and revenue by approximately 50 percent.”	Wardell lacks personal knowledge and is speculating as to whether a DMCA notice will prevent a console publisher from publishing Origins.	
18		Wardell has failed to provide foundation or otherwise establish personal knowledge that Stardock’s potential audience and revenue will be reduced by approximately 50 percent. This statement is speculative.	
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26	Wardell Decl., ¶ 25, Pg. 5, Lines 9-10	<u>FRE 602</u> <u>Lack of Foundation</u> <u>Speculation</u>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
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1		“DMCA take down notices permanently harm our relationship with our customers.”	Wardell lacks personal knowledge and is speculating as to whether a DMCA notice will permanently harm Stardock’s relationship with its customers.	
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5		Wardell Decl., ¶ 26, in its entirety	<u>FRE 801, 802</u> <u>Lacks Foundation</u>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
6		“The rumored suggestion that <i>Origins</i> will not be released has <i>already</i> led to backlash from Stardock’s customers who have pre-ordered the game and then requested a refund. Following are quotes from customers who requested a refund “because the game might not be released”: [<i>customer quotes removed for brevity but subject to the objection</i>].”	The purported statements from Stardock’s customers are extrajudicial statements now offered for their truth and are therefore inadmissible hearsay. Moreover, Wardell has failed to provide information sufficient to establish the foundation for these statements, or even indicate where the statements originated. For this reason, the statements are inherently unreliable.	
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14		Wardell Decl., ¶ 28, Pg. 6, Lines 12-15	<u>FRE 602</u> <u>Lack of Foundation</u> <u>Speculation</u>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
15		“False accusations that create doubt amongst Stardock’s ecosystem of partnerships and players in the industry will have material financial and reputation impacts that will have direct financial consequences due to failure to deliver on existing contracts.”	Wardell has failed to establish foundation for his insinuation that statements made by Reiche and Ford are false. Wardell lacks personal knowledge and is speculating as to the financial and reputation impacts that could occur if <i>Origins</i> is not released as scheduled.	
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23		Wardell Decl., ¶ 29, Pg. 6, Lines 18-19	<u>FRE 602</u> <u>Lack of Foundation</u> <u>Speculation</u>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
24		“The damage from a failed launch would likely impact the sale of not only <i>Origins</i> , but all of Stardock’s offerings.”	Wardell lacks personal knowledge and is speculating as to the “likely impact” and damage that could be associated with a failed launch.	
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1		Wardell has failed to establish foundation sufficient to support his statement that a failed launch of <i>Origins</i> would impact the sale of “all” of Stardock’s offerings.	
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5	Wardell Decl., ¶ 30, Pg. 6, Line 24 – Pg. 7, Line 3	<u>FRE 602</u> <u>Lack of Foundation</u> <u>Speculation</u>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
6	“Without a legal avenue for	Wardell lacks personal knowledge	
7	purchase, many customers will	and is speculating as to the	
8	acquire the game through piracy	expected actions of its customers	
9	distribution channels. Sales would	in the event <i>Origins</i> is not released	
10	be irreparably lost because if there is	as scheduled.	
11	no legal means to obtain the game	Wardell lacks foundation and is	
12	many people will resort to getting it	speculating as to whether sales	
13	some other way. We project sales of	would be “irreparably lost.”	
14	approximately \$3.1 million in the	Wardell has failed to establish	
15	first 60 days of <i>Origins</i> ’ release with	foundation sufficient to support	
16	approximately \$2 million of that	Stardock’s projected sales of the	
17	being in the first 14 days. Sales lost	<i>Origins</i> release.	
18	due to piracy would be difficult to		
19	calculate, but would be significant in		
20	any case.”		
21	Wardell Decl., ¶ 31, Pg. 7, Lines 4-5	<u>FRE 602</u> <u>Lack of Foundation</u> <u>Speculation</u>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
22	“The gaming press would also	Wardell lacks personal knowledge	
23	interpret a DMCA take down notice	and is speculating as to how the	
24	as a signal that the merits of the case	gaming press would interpret a	
25	are with Reiche and Ford.”	DMCA notice.	
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27	Wardell Decl., ¶ 31, Pg. 7, Lines 6-8	<u>FRE 602</u> <u>Lack of Foundation</u> <u>Speculation</u>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
28	“should a takedown notice preclude	Wardell lacks personal knowledge	
	sale of <i>Origins</i> on Steam, it would	and is speculating as to the	
	permanently damage the value of	purported damage that would	
	Stardock’s brand and reputation and	result from the issuance of a	
	very likely impact the sales of the	DMCA notice, including with	
	<i>Origins</i> game.”	regard to any purported	
		reputational harm and damage to	
		Stardock’s brand.	

1	Wardell Decl., ¶ 32, Pg. 7, Lines 9-11	<u>FRE 602</u> <u>Lack of Foundation</u> <u>Speculation</u>	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
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3	“Any delay in the release of <i>Star</i>		
4	<i>Control: Origins</i> would require	Wardell has failed to establish	
5	Stardock to severely cut back on its	foundation sufficient to support	
6	gaming staff and require it to lay off	his statement that a delay in the	
7	approximately 26 employees.”	release of <i>Origins</i> would require	
8		Stardock to lay off approximately	
9		26 employees.	
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